



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3206 OF 2018

Sudhakar Kalu Parakh
Age: 53 years, Occu. Agriculture,
R/o. Anturli, Taluka- Muktainagar,
District- Jalgaon

...APPELLANT
[Orig. Claimant]

VERSUS

1. Jasmansingh Mishrilal
Age: 53 years, Occu. Business,
R/o. C/o. R.K.R.C. Transport,
Tatibandh, Raipur, Pin-492 001
Dist. Raipur, Chhatisgarh.

2. New India Insurance Co. Ltd.,
Mandore Market, Behind Ambedkar
Market, Jalgaon, Taluka & Dist. Jalgaon. **...RESPONDENTS**
[Orig. Respondents]

.....
Mr. Girish S. Rane, Advocate for appellant
Mr. Ajit B. Kadethankar, Advocate for respondent No. 2
Respondent No. 1 served through paper publication
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 11th JULY, 2024
PRONOUNCED ON: 18th JULY, 2024

ORDER :

1. Appellant/Claimant has filed this appeal challenging the judgment and award passed by Member, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 405/2015, seeking enhancement of compensation.

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2. Claimant is agriculturist and is doing allied business. On 02.05.2015 at about 2.45 pm, claimant was proceeding in Bolero jeep No. MH-19-AP-0034 on Jalgaon- Bhusaval highway, on Vaghur river bridge one trailer No. CG-04-HS-8125 came from opposite direction and gave dash to the Bolero jeep. In the said accident, claimant suffered injuries to his head, chest, left hand, shoulder, waist and fracture to his neck and face. He was admitted in Dr. Ulhas Patil Medical College and Hospital, Jalgaon on 02.05.2015 till 04.05.2017 and thereafter he was admitted at Bombay Hospital and Research Centre, Mumbai on 05.05.2015 till 17.05.2015. Many operations were performed on the claimant, for which claimant had incurred Rs. 4,00,000/- towards medical expenses. He therefore filed claim petition for compensation of Rs. 5,00,000/-.

3. Respondent No. 1/owner of the trailer, though served failed to appear and claim proceeded *ex parte* against him.

4. Respondent No. 2/Insurance Company opposed the claim by filing written statement, denying all the averments in the claim petition. It is contended that claim petition is not maintainable for non joinder of driver and insurance company of Bolero jeep, driver of the jeep had no valid and effective driving

license at the time of accident. Hence, liability to pay compensation was denied.

5. The Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs. 60,000/- inclusive of no fault liability amount of Rs. 25,000/- along with interest @ 6% per annum. Claimant is aggrieved by the quantum of compensation.

6. Heard learned advocate for claimant and learned advocate for the insurance company. Perused the record.

7. Learned advocate for claimant assailed the quantum of compensation awarded by the Tribunal contending that, though, documents of medical treatment and bills were produced on record, Tribunal has ignored them on the ground that author of documents are not examined by claimant and awarded meager compensation of Rs. 30,000/- towards medical expenses. Claimant was hospitalized for 17 days, however, meager compensation of Rs. 10,000/- is awarded by the Tribunal under the head of pain and suffering and loss of amenities. Similarly, only Rs. 10,000/- is awarded under the head of loss of earning for the period of treatment and recovery of the claimant.

He therefore submits that compensation awarded by the Tribunal is not just and fair and same is grossly inadequate. In support of his case, he has relied on ***Dattatraya Laxman Shinde v. Nana Raghunath Hire*** and others, 2011(6) ABR (NOC) 564 (Bom) and ***Rekha Jain v. National Insurance Co. Ltd.***, AIR 2013, Supreme Court 3429.

8. Learned advocate for insurance company, on the other hand, supported the impugned judgment. He submits that claimant has merely produced medical bills and documents which are not proved on record, in accordance with law and therefore, Tribunal has rightly awarded Rs. 30,000/- towards lumpsum medical expenses. He submits that Tribunal has assigned proper reasons and no case is made out by the claimant to interfere in the same. He therefore submits that first appeal may be dismissed.

9. Indisputably, claimant has received injuries in accident dated 02.05.2015. It is a matter of record that FIR was lodged against driver of the trailer which gave dash to the Bolero, for rash and negligent driving and causing accident. Claimant is mason and he was earning Rs. 10,000/- per month from the work. He was 50 years of age at the time of accident.

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The Tribunal has assessed notional income of the claimant at Rs. 3,000/- per month. This fact is neither seriously challenged nor any rebuttal evidence is brought on record by the insurance company. Considering the fact that claimant was skilled worker, Tribunal has erred in assessing his notional income at Rs. 3,000/- per month. Considering the prevalent wages of skilled worker, Tribunal ought to have assessed notional income of claimant at Rs. 4500/- per month.

10. Claimant has placed on record documents of the treatment taken by him at Dr. Ulhas Patil Hospital and Bombay Hospital. Diagnosis of claimant is "RTA C Head Injury". In the Discharge Summary (Exhibit-21/2) of Bombay Hospital final diagnosis is recorded as "RTA C Rt cerebellar contusion, B/c frontal SDH and ① D Capital Blood." Claimant had incurred total amount of Rs. 2,50,225/- towards medical expenses.

The Tribunal held that *"the amount under the said medical and hospital bills is huge one to the tune of Rs. 2,50,225/- and not meager one, therefore, it is obligatory on the part of the petitioner to examine the author of the said documents. Not only that, the petitioner has also not proved the nature of injuries sustained to him in the said accident by*

examining the doctors of the aforesaid hospitals."

11. It is well settled that the Tribunal is not a Court and hence is not bound by strict rules of pleadings and evidence. Claimant has to prove his case on the basis of preponderance of probabilities. In Dattatraya Shinde (supra) the claimant had produced voluminous original documents such as medical bills, vouchers and documents evidencing expenditure of medicines, medical treatment, special diet, traveling expenses and residence of relatives and friends. Insurance company did not admit these documents. In the examination-in-chief claimant made reference to all the bills and vouchers. The Tribunal did not take those bills and vouchers into consideration, on the ground that they were not proved in accordance with law. In these facts, learned Single Judge of this Court held:

"the Tribunal constituted under the said Act is not bound by strict rules of evidence. Therefore, the said bills and vouchers ought to have taken into consideration by the Tribunal in absence of the specific case made out that the documents were fabricated."

12. In Rekha Jain (supra), the Tribunal had taken into consideration the medical bills and vouchers produced on record by the claimant, which were also referred to in the evidence of claimant. The Tribunal marked these documents, in spite of

objections from the insurance company and considered them while awarding compensation. The High Court interfered in the said finding and reduced the compensation of Rs. 17,51,726/- to Rs. 7,77,000/-. In these facts, Apex Court observed thus:

"This has been very lightly interfered with by the learned Judge of the High Court without application of mind and consideration of legal evidence on record particularly in the absence of rebuttal evidence and further, the Insurance Company was unable to show that the documents referred to supra produced by the appellant in her evidence are fabricated documents, which have been produced with deliberate intention to prefer a false claim in this regard as contended by the learned counsel on behalf of the Insurance Company."

13. Both the above rulings support the case of claimant that the Tribunal erred in ignoring the bills and vouchers of medical expenses of Rs. 2,50,225/- in absence of any rebuttal evidence by insurance company. When the claimant has produced on record medical bills and vouchers showing that he had incurred total amount of Rs. 2,50,225/-, the Tribunal has erroneously proceeded to award Rs. 30,000/- towards medical and hospital bills in lumpsum, on the ground that author of the medical bills are not examined. The Tribunal has drawn unwarranted inference and has based this finding on surmises and conjecture. This finding is therefore erroneous and same is

unsustainable.

14. Taking into consideration the diagnosis recorded by Dr. Ulhas Patil Medical College and Hospital, Jalgaon and Bombay Hospital and Research Centre, Mumbai, and in the light of above ratio, the Tribunal has erred in holding that claimant has not proved nature of injuries suffered by him by examining doctor. The Tribunal has further erred in awarding only Rs. 30,000/- towards medical and hospitalization expenses, Rs. 10,000/- towards loss of earning for the period of his treatment and recovery and Rs. 10,000/- towards pain and suffering and loss of amenities. Taking into consideration the injuries suffered by the claimant, he is entitled for following compensation.

Sr. No.	Particulars	Compensation
a.	Injuries Suffered	Rs. 50,000/-
b.	Medical Expenses	Rs. 2,50,225/-
c.	Pain and Suffering and Loss of Amenities	Rs. 25,000/-
d.	Loss of Earning	Rs. 25,000/-
	Total	Rs. 3,50,225/-
	Compensation awarded by the Tribunal	Rs.60,000/-
	Total Enhanced Compensation (Rs. 3,50,225 - Rs. 60,000)	Rs.2,90,225/-

15. In the result following order:

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ORDER

- (I) First Appeal is partly allowed.
- (II) The judgment and award passed by Tribunal is modified.
- (III) Respondents are jointly and severally liable to pay enhanced compensation of Rs. 2,90,225/- to claimant, along with interest @ 6% p.a. till realization.
- (IV) Respondents shall deposit compensation amount in the Tribunal within 12 weeks from today. Claimant will be entitled to withdraw the same.
- (V) Respondents to pay proportionate costs.

[NITIN B. SURYAWANSHI, J.]